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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

STEWART RESMER, an individual, on behalf)
of himself and all others similarly situated,) Case No. CV 09-08497 MMM (VBKx)
Plaintiff,)
) **PLAINTIFF'S MOTION FOR CLASS**
v.)
CERTIFICATION
OVERSEE.NET, INC., a California)
corporation, and SNAPNAMES.COM, INC., an) Date: Monday, April 26, 2010
Oregon Corporation,) Time: 10:00 a.m.
Defendants.) Location: Courtroom 780
Action Filed: Nov. 18, 2009
)

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on April 26, 2010, at 10:00 a.m., or as soon thereafter as
 3 counsel may be heard before the Honorable Margaret M. Morrow, in Courtroom 780 of the United
 4 States District Court for the Central District of California, Western Division, located at United
 5 States Courthouse, 255 East Temple Street, Los Angeles, California 90012, Plaintiff Stewart
 6 Resmer will and hereby does move under Fed. R. Civ. P. 23(a) and (b)(2)-(3) and Local Rule 23-3
 7 for an order certifying this case as a class action on behalf of two classes.

8 Pursuant to Fed. R. Civ. P. 23(a) and L.R. 23-3, Plaintiff moves for certification of one class
 9 and one sub-class under Counts I-VI of Plaintiff's Class Action Complaint.

10 The first proposed class, the Global Effect Class, consists of: All individuals and entities in
 11 the United States who bid in any SnapNames.com auction for Internet domain names during the time
 12 when SnapNames.com or Oversee.net employees or agents bid without disclosing that fact to the
 13 bidders (approximately January 1, 2005) through and including November 4, 2009.

14 The second proposed class, the Direct Effect Sub-Class, consists of: All individuals and entities
 15 in the United States (1) who bid in one or more SnapNames.com auctions for Internet domain names in
 16 which a SnapNames.com or Oversee.net employee or agent, including but not limited to the employee
 17 known as "halvarez," bid without disclosing that fact to the bidders, (2) whose bidding was affected by
 18 the employee bidding, and (3) who have not received complete compensation for any damage incurred
 19 as a result of the employee bidding.

20 Excluded from the Classes are (1) Defendants, their legal representatives, assigns, and
 21 successors, and any entity in which Defendants have a controlling interest; (2) any judge to whom this
 22 case is assigned and those judges' immediate families; and, (3) any attorney who appears in a case
 23 concerning the conduct alleged herein and those attorneys' immediate, blood, and marital family
 24 members.

25 Both classes are nationwide in scope. In support of his motion, Plaintiff states as follows:

1 1. The Court may certify a class when the plaintiff demonstrates that the proposed class
 2 and proposed class representatives meet the following prerequisites of Rule 23(a): numerosity,
 3 commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a)(1)-(4). After
 4 meeting the strictures of Rule 23(a), the plaintiff must then demonstrate that common questions of
 5 law or fact predominate and that maintaining the suit as a class action is superior to other methods
 6 of adjudication. Fed. R. Civ. P. 23(b)(3).

7 2. In determining whether to certify a class, the Court does not inquire into the merits
 8 of the plaintiff's claims. *See Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 177 (1974). As such, the
 9 Court accepts the allegations of the plaintiff's complaint as true, but may consider matters beyond
 10 the pleadings to determine if the claims are suitable for resolution on a class-wide basis. *Celano v.*
 11 *Marriot Int'l, Inc.*, 242 F.R.D. 544, 548 (N.D. Cal. 2007).

12 3. The numerosity prerequisite is met when "the class is so numerous that joinder of all
 13 members is impractical." Fed. R. Civ. P. 23(a)(1). To satisfy this requirement there is no
 14 "specific" number required, nor are the plaintiffs required to state the "exact" number of potential
 15 class members. *Celano*, 242 F.R.D. at 548. Generally, the numerosity requirement is satisfied
 16 when the class comprises 40 or more members. *See id.* at 549. Courts, additionally, have held that
 17 "[w]here the exact size of the class is unknown but general knowledge and common sense indicate
 18 that it is large, the numerosity requirement is satisfied." *Orantes-Hernandez v. Smith*, 541 F. Supp.
 19 351, 370 (C.D. Cal. 1982). In this case, the proposed Global Effect Class encompasses bidders in
 20 approximately 1 million auctions, and Plaintiff estimates the number of Global Effect Class
 21 members to exceed 10,000 persons. The proposed Direct Effect Sub-Class encompasses bidders in
 22 approximately 50,000 auctions (*see Compl. ¶ 20*), and Plaintiff estimates the number of Direct
 23 Effect Sub-Class members to exceed 1,000 persons. Accordingly, the proposed classes satisfy the
 24 requirement that the proposed classes be so numerous that joinder of their claims be impracticable.
 25 *See Alba Conte & Herbert Newberg, NEWBERG ON CLASS ACTIONS § 3:5, 243-46 (4th ed. 2002)*
 26 ("Class actions under the amended Rule 23 have frequently involved classes numbering in the

1 hundreds, or thousands...In such cases, the impracticability of bringing all class members before
 2 the court has been obvious, and the Rule 23(a)(1) requirement has been easily met.”)

3 4. The second threshold to certification requires that “there are questions of law or fact
 4 common to the class.” Fed. R. Civ. P. 23(a)(2). “[P]laintiffs may demonstrate commonality by
 5 showing that class members have shared legal issues by divergent facts or that they share a common
 6 core of facts but base their claims for relief on different legal theories.” *Dukes v. Wal-Mart, Inc.*,
 7 509 F.3d 1168, 1177 (9th Cir. 2007). “[O]ne significant issue common to the class may be
 8 sufficient to warrant certification.” *Id.*

9 5. As alleged in this case, all members of the Global Effect Class share the common
 10 issue of whether they participated in a SnapNames auction during the time in which an employee of
 11 defendants participated in auctions without disclosing that fact to auction participants. As further
 12 alleged in this case, all members of the Direct Effect Sub-Class share the common issue of whether
 13 they participated in a SnapNames auction in which an employee of defendants participated without
 14 disclosing that fact to auction participants. These common issues among members of the classes
 15 result in common legal questions such as: (1) whether defendants’ conduct violates the California
 16 Auction Law, Cal. Civ. Code § 1812.608(h)(2); (2) whether defendants engaged in fraud and shill
 17 bidding in violation of Cal. Civ. Code §§ 1572, 1573, 1709, and 1710; (3) whether defendants
 18 engaged in unfair, unlawful, and/or fraudulent business practices in violation of Cal. Bus. & Prof.
 19 Code § 17200; (4) whether defendants breached their fiduciary duties to members of the classes; (5)
 20 whether defendants fraudulently concealed material facts with the intent to deceive members of the
 21 classes; and, (6) whether defendants have unjustly received money belonging to the Plaintiff and
 22 members of the classes and whether under principles of equity and good conscience defendants
 23 should not be able to keep such monies.

24 6. The commonality requirement is therefore met. *See Dukes*, 509 F.3d at 1177.

25 7. Rule 23 next requires that Resmer’s claims are typical of those of the class. Fed. R.
 26 Civ. P. 23(a)(3). “[T]ypicality focuses on the relationship of facts and issues between the class and

1 its representatives.” *Dukes*, 509 F.3d at 1184, fn.12 (citation omitted) (“[u]nder the rule’s
 2 permissive standards, representative claims are ‘typical’ if they are reasonably coextensive with
 3 those of absent class members; they need not be substantially identical[;] some degree of
 4 individuality is to be expected in all cases, but that specificity does not necessarily defeat
 5 typicality”).

6 8. In this case, Plaintiff and the proposed class members were equally harmed by
 7 defendants as a result of a common course of conduct. An employee of defendant SnapNames, a
 8 wholly-owned subsidiary of defendant Oversee.net, engaged in shill bidding in approximately
 9 50,000 auctions, thereby affecting Plaintiff and each of the class members. As a result of this
 10 conduct, Plaintiff and the proposed class members were damaged in a nearly identical manner.
 11 Accordingly, Plaintiff’s claims are typical of those of the classes.

12 9. The final Rule 23(a) prerequisite requires that the proposed class representatives
 13 have and will continue to “fairly and adequately protect the interests of the class.” Fed. R. Civ. P.
 14 23(a)(4). “This factor requires: (1) that the proposed representative Plaintiffs do not have conflicts
 15 of interest with the proposed class, and (2) that Plaintiffs are represented by qualified and
 16 competent counsel.” *Dukes*, 509 F.3d at 1185.

17 10. In this case, Resmer has the same interests as the proposed class members—all have
 18 been affected by defendants’ systematic shill bidding. Therefore, Resmer has no interests
 19 antagonistic to the interests of the proposed classes. Further, Class Counsel are well respected
 20 members of the legal community, have regularly engaged in major complex litigation, and have had
 21 extensive experience in consumer class action lawsuits involving technology issues that are similar
 22 in size, scope and complexity to the present case. (*See Exhibit A*, resume of Class Counsel).
 23 Accordingly, both Resmer and his counsel will adequately represent the classes.

24 11. Once the subsection (a) prerequisites are satisfied, a plaintiff seeking certification
 25 under Rule 23(b)(2) or 23(b)(3) must satisfy several additional requirements. Rule 23(b)(2)
 26 provides that the party opposing certification must have acted or failed to act on grounds that apply
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1 generally to the class, “so that final injunctive relief or corresponding declaratory relief is
 2 appropriate....” Fed. R. Civ. P. 23(b)(2). In this case, Defendants failed to inform Plaintiff and the
 3 other members of the classes that one or more employees of Defendants bid in their auctions,
 4 thereby affecting the ultimate prices they paid for domain names. Likewise, Defendants failed to
 5 protect Plaintiff and the other members of the classes from such shill bidding. Thus, Defendants
 6 acted and failed to act on grounds generally applicable to the classes as a whole, making final
 7 injunctive relief is necessary to protect Plaintiff and the classes from such conduct in the future, and
 8 satisfying the requirements of Rule 23(b)(2).

9 12. Next, Rule 23(b)(3) provides that a class action can be maintained where the
 10 questions of law and fact common to members of the class predominate over any questions
 11 affecting only individuals, and the class action mechanism is superior to the other available
 12 methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P 23(b)(3); *Pierce v.*
 13 *County of Orange*, 519 F.3d 985, 991 n. 5 (9th Cir. 2008).

14 13. In this case, common issues of fact and law predominate. Defendants’ failure to
 15 notify class members of the fact that one or more of Defendants’ employees was bidding in their
 16 auctions, as well as Defendants’ failure to protect class members from such shill bidding, is
 17 common to all class members’ claims and their damages, and predominates over any issues
 18 applicable to any individual members of the classes.

19 14. In addition, the instant class action is superior to other available methods for the fair
 20 and efficient adjudication of Plaintiff and the classes’ claims. Absent a class action, most members
 21 of the classes would find the cost of litigating their claims to be prohibitive and such individual
 22 actions would be judicially inefficient.

23 15. Because Plaintiff’s deadline under L.R. 23-3 for moving for class certification
 24 precedes the initial Case Management Conference and even the deadline to conduct a Rule 26
 25 conference, Plaintiff was not able to engage in the discovery necessary to more thoroughly address
 26 the requirements of Rule 23 before moving for class certification. Consequently, Plaintiff plans to
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1 provide a complete memorandum of law in support of his motion for class certification upon
2 completing sufficient class discovery.

3 **WHEREFORE**, Plaintiff Stewart Resmer respectfully requests that the Court (1) certify the
4 Global Effect Class and Direct Effect Sub-Class as defined in his Complaint, (2) appoint Stewart
5 Resmer as Class Representative, (3) appoint Michael J. Aschenbrener, Benjamin H. Richman, and
6 Jay Edelson of Edelson McGuire, LLC as Class Counsel, (4) in the alternative, reserve ruling on
7 Plaintiff's Motion for Class Certification until after Plaintiff has had an opportunity to conduct
8 discovery related to the issues presented herein, and (5) provide any other or further relief that the
9 Court deems equitable and just.

10
11 DATED: February 16, 2010

STEWART RESMER

12
13 By: s/ Michael J. Aschenbrener
14 MICHAEL J. ASCHENBRENER
One of Mr. Resmer's Attorneys

CERTIFICATE OF SERVICE

I, Michael J. Aschenbrener, an attorney, certify that on February 16, 2010, I served the above and foregoing ***Plaintiff's Motion for Class Certification***, by causing true and accurate copies of such paper to be filed and transmitted to the persons shown below via the Court's CM/ECF electronic filing system, on this the 16th day of February, 2010.

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